

N.D.A.G. Letter to Lundberg (May 5, 1986)

May 5, 1986

Ms. Jane M. Lundberg, Commissioner
Department of Banking and Financial Institutions
State Capitol
Bismarck, North Dakota 58505

Dear Ms. Lundberg:

Thank you for your letter of April 14, 1986, in which you inquire whether you must enforce the provisions of N.D.C.C. § 6-03-59 concerning loan limitations for North Dakota banks when such enforcement would result in a violation of federal law or otherwise be detrimental to the financial soundness of a bank.

N.D.C.C. §6-01-09 imposes a duty upon the Commissioner of Banking and Financial Institutions to supervise and examine banks under the jurisdiction of the state Banking Board. N.D.C.C. §6-01-09 states in relevant part as follows:

6-01-09. SUPERVISION AND EXAMINATION BY COMMISSIONER OF BANKING AND FINANCIAL INSTITUTIONS. * * *The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether such methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing such corporation and institutions, and for such purpose the commissioner may examine the officers, agents, and employees of such corporations and institutions and all persons doing business therewith. The commissioner shall report the condition of such corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as, in its discretion, the exigencies may demand.

As Commissioner, therefore, you are required to periodically examine financial institutions under your jurisdiction and report your findings to the state Banking Board. This includes reporting "any infringement of the laws" governing such financial institutions. N.D.C.C. § 6-01-09. If your examinations reveal that financial institutions are not complying with the requirements of N.D.C.C. § 6-03-59, this noncompliance should be reported to the state Banking Board so that it can determine whether enforcement procedures are warranted.

The enforcement of state banking laws is a discretionary function of the state Banking Board. N.D.C.C. §6-01-09. If enforcement of N.D.C.C. §6-03-59 would result in violation of federal law, or otherwise result in serious detriment to an individual bank, the Banking Board may, in exercising its discretion, decide that the benefits of enforcement are

outweighed by the corresponding costs. Enforcement of state banking laws and regulations necessarily involves an exercise of discretion on a case-by-case basis.

The penalties for violating N.D.C.C. §6-03-59 are provided in N.D.C.C. §6-03-61 which states that the "officer, director, or employee thereof willfully permitting or approving such loan is guilty of a class B misdemeanor, and in addition thereto, shall be liable personally to the association for the amount of such loan in excess of the statutory limit." In addition to the specific penalties of N.D.C.C. § 6-03-61, the state Banking Board may exercise its discretionary powers pursuant to N.D.C.C. §6-01-09 and "take such action as. . .the exigencies may demand."

I trust this answers your inquiry.

Sincerely,

Nicholas J. Spaeth

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